

09 CV 5354

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Jun 09, 2009

FILED
CLERK'S OFFICE

A CERTIFIED TRUE COPY

ATTEST

By Dana Stewart on Jun 09, 2009

FOR THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATIONUNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FOSAMAX PRODUCTS LIABILITY LITIGATION

In re Fosamax Products Liability Litigation,
W.D. Washington, C.A. No. 2:09-10)
)

MDL No. 1789

TRANSFER ORDER

Before the entire Panel*: An individual subpoenaed by the Plaintiffs' Steering Committee in MDL No. 1789 moves pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), asking the Panel to vacate its order conditionally transferring this action to the Southern District of New York for inclusion in MDL No. 1789. The Plaintiffs' Steering Committee in MDL No. 1789 opposes the motion to vacate.

After considering all argument of counsel, we find that this action involves common questions of fact with the actions in this litigation previously transferred to the Southern District of New York, and that transfer of this action to the Southern District of New York for inclusion in MDL No. 1789 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. We further find that transfer of this action is appropriate for reasons that we set out in our original order directing centralization in this docket. In that order, we held that the Southern District of New York was a proper Section 1407 forum for actions involving allegations that ingestion of the prescription drug Fosamax caused adverse effects, in particular, osteonecrosis of the jaw. *See In re Fosamax Products Liability Litigation*, 444 F.Supp.2d 1347 (J.P.M.L. 2006).

This action, arising from a motion to quash a subpoena, stands out from other civil actions for which the Panel usually considers transfer; however, transfer is still appropriate. The deposition at issue in the motion to quash involves factual questions common to the actions in MDL No. 1789, and the expertise and familiarity of the transferee judge with the factual and legal issues in the Fosamax litigation favor having him decide the motion to quash. Accordingly, transfer will promote the just and efficient conduct of this action and the litigation taken as a whole, and thus is consistent with the purposes of Section 1407.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable John

* Judges Heyburn, Motz and Hansen took no part in the decision of this matter.

A CERTIFIED COPY

J. MICHAEL McMAHON,

CLERK

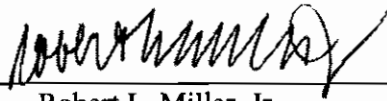
BY *Catherine L. Sarsley*

DEPUTY CLERK

- 2 -

F. Keenan for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, appearing to read 'Robert L. Miller, Jr.', is written over a horizontal line.

Robert L. Miller, Jr.
Acting Chairman

John G. Heyburn II, Chairman*
Kathryn H. Vratil
W. Royal Furgeson, Jr.

J. Frederick Motz*
David R. Hansen*
Frank C. Damrell, Jr.